

UNITED STATES OF AMERICA,)
)
v.) Criminal No. 00-10-B-H
)
JONATHAN BLUMBERG,)
)
)
Defendant)

Jonathan Blumberg, the defendant in the above-referenced action, is charged by Indictment returned March 14, 2000, with three counts of Threatening Communication, a violation under 18 U.S.C. § 875 (c). He seeks suppression of oral statements he made on March 10, 2000 to FBI Special Agent Merkle M. Dennison at the Kennebec County Jail in Augusta, Maine. He contends that these post-arrest statements were made in violation of his Fifth Amendment rights because after he had been warned of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966) he invoked his right to counsel such that the government agent should have ceased all questioning.

On May 11, 2000, I held an evidentiary hearing on the issues raised in Defendant's Motion. Based on the record before me, I recommend that the Court adopt the following findings of fact and deny the motion to suppress.

This prosecution stems from a series of telephone conversations occurring between March 6th and 9th, 2000 between the Defendant's residence in North Vassalboro, Maine and individuals in the State of Vermont. The Defendant, a college graduate with three years of

postgraduate study, had a longstanding dispute with a professor at the University of Vermont. That dispute, which relates to agricultural research materials, led to a one hundred page complaint which plaintiff drafted and filed pro se in Vermont in March, 1998. The defendants in that action include not only Dr. Leonard Perry, a professor at the university, but also certain governmental officials who are connected with the U.S. Department of Agriculture. The U.S. Attorney's Office in Vermont, through the person of Carol Shea, Assistant United States Attorney, (AUSA), is representing those governmental officials in that lawsuit.

After filing his pro se lawsuit in Vermont, the Defendant received communication from the U.S. Department of Education regarding delinquent student loans. Frederick Emery, AUSA from Portland, Maine, ultimately became the attorney responsible for prosecuting a collection action against Mr. Blumberg. That action, *U.S.A. v. Blumberg*, Civil Action No. 99-0170-B was filed in the U.S. District Court, Bangor, Maine on July 1, 1999. Mr. Emery and the defendant, pro se, engaged in a number of settlement discussions surrounding that case. Mr. Blumberg's position was that the government owed him far more in the Vermont lawsuit than he owed for student loans and that when the Vermont lawsuit was resolved in his favor, he would be able to satisfy his student loan obligation.

In January, 2000, Mr. Emery, on behalf of the U.S. Department of Education, agreed to a stipulated dismissal of the student loan action. The reason for the voluntary dismissal was "for the purpose of allowing the parties more time to research and to attempt to resolve and settle the issues and debts involved in this case." (Gov. Ex. No. 4) Consistent with the Defendant's testimony and the representations in Mr. Emery's letter to the Defendant of January 14, 2000 (Gov. Ex. No. 4), it appears that Mr. Emery attempted to contact the Vermont U.S. Attorney's

Office in regard to the status of Mr. Blumberg's civil action. Blumberg and Emery last communicated by letter on March 7, 2000 (Defendant's Ex. No. 4), during the time period involved in the allegations in the indictment. The communications between Emery and the Defendant had been cordial and the Defendant believed that Emery was a hardworking public servant who sincerely wanted to provide him with assistance.

During the same time period of the first week of March, 2000, the Defendant made a telephone call to the U.S. Attorney's Office in Portland which a secretary there perceived as unsettling. On March 7, 2000, Mr. Emery returned Defendant's telephone call and advised him that the secretary found his tone and manner disturbing and that he was to refrain from placing such calls to his office in the future. Later that same day the Defendant called the U.S. Attorney's Office in Bangor and spoke with Jay McCloskey, the U.S. Attorney and Emery's supervisor. McCloskey told Blumberg that the U.S. Attorney's Office in Maine had no intention of interfering in the Vermont case.

Following the issuance of an arrest warrant and criminal complaint on March 10, 2000, the Defendant was arrested and taken to the Kennebec County Jail. Special Agent Merkle Dennison of the FBI was the agent in charge of the arrest, although she was not the individual responsible for the case investigation and she had only limited familiarity with the allegations. Defendant Blumberg's arrest at his home occurred at approximately 6:00 p.m. on a Friday night. There were no unusual circumstances associated with the arrest and the Defendant appeared to be in complete control of his faculties at all times. At the Kennebec County Jail the Defendant was shown the complaint and arrest warrant. He was advised of his *Miranda* rights and signed a written waiver of those rights. (Gov. Ex. No. 1, Att. B).

Prior to signing that waiver, the Defendant indicated he wanted to speak with Frederick Emery, AUSA. The Defendant told Agent Dennison that Mr. Emery was familiar with the civil aspects of his interactions with the Vermont professor. Agent Dennison clarified that Mr. Emery worked with the U.S. Attorney's Office and was not available to speak with the Defendant as it was after business hours. The Defendant then signed the waiver of rights and spoke with Agent Dennison for approximately forty-five minutes. The Defendant told her, in substance, that the statements attributed to him in the criminal complaint were accurate.

Mr. Blumberg, who has experience in civil litigation and is an educated person, knew that Frederick Emery was not representing him and was not his lawyer. He did respect Mr. Emery and felt that Mr. Emery had been sympathetic and understanding during their negotiations surrounding the student loan debt. Mr. Blumberg understood the relationship between himself and Emery to be that of "U.S. citizen/public officer." The Defendant felt that Emery was a "nice guy." At no time did Emery ever tell Blumberg he was representing him as his attorney, nor did Blumberg have any actual belief that Emery was his attorney.

Discussion

The Defendant argues that when he requested to speak with Mr. Emery, he thereby invoked his right to counsel. Under *Edwards v. Arizona*, 451 U.S. 477 (1981), once a suspect in custody requests to speak with an attorney, interrogation must cease until the suspect has had the opportunity to consult with a lawyer. If indeed Defendant's request to speak with Emery was an invocation of his right to have an attorney present during custodial interrogation, then a valid waiver of his right to remain silent cannot be shown merely because he proceeded to respond to further police-initiated custodial interrogation, even if he had been fully advised of his rights.

Edwards, 451 U.S. at 484.¹

The circumstances of the present case, however, do not suggest that the Defendant sought to have Mr. Emery called because he was seeking legal counsel or invoking his right to counsel. The Defendant, according to Agent Dennison, clearly stated on a number of occasions that he wanted to speak with her about the situation. He wanted Mr. Emery called, not because he had any expectation at all that Mr. Emery would provide him legal counsel, but because he thought Emery would be able to better explain to the agent his side of the controversy in Vermont. A suspect does not invoke the right to counsel every time he uses the word “attorney” or mentions an attorney by name. *See United States v. Jardina*, 747 F.2d 945, 949 (5th Cir. 1984), (“Indeed, the words he spoke clearly indicated that he wished his attorney to work out a cooperative deal with the government in the future. . . . The word “attorney” has no talismanic qualities. A defendant does not invoke his right to counsel any time the word falls from his lips.”) (citations omitted). Blumberg’s statements and actions did not invoke any present right to counsel.

Conclusion

For the foregoing reasons, I recommend that the Motion to Suppress be **DENIED**.

Notice

¹ It is true that the United State Supreme Court has qualified *Edwards* to allow the police to reinterrogate a suspect, assuming a waiver after new *Miranda* warnings, where a defendant “initiated” the conversation. *Oregon v. Bradshaw*, 462 U.S. 1039 (1983). The facts of this case do not implicate *Bradshaw* because the exchange at issue here involved one officer and one set of *Miranda* warnings. *United States v. Ortiz*, 177 F.3d 108 (1st Cir. 1999).

A party may file objections to those specified portions of this report or proposed findings or recommended decision for which de novo review by the district court is sought, together with a supporting memorandum, within ten days after being served with a copy hereof. A responsive memorandum shall be filed within ten days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this day of May, 2000.

Margaret J. Kravchuk
U.S. Magistrate Judge

TRLLST BANGOR

U.S. District Court
District of Maine (Bangor)

CRIMINAL DOCKET FOR CASE #: 00-CR-10-ALL

USA v. JONATHAN BLUMBERG

Filed: 03/14/00

Other Dkt # 2:00-m -00012

Case Assigned to: JUDGE D. BROCK HORNBY

JONATHAN BLUMBERG (1)
defendant

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Pending Counts:

Disposition

18:875C.F INTERSTATE
COMMUNICATIONS - THREATS
(1 - 3)

Offense Level (opening): 4

Terminated Counts:

NONE

Complaints

Disposition

Counts I, II: communication of
threat in interstate
commerce in violation of Title
18, USC sec. 875(c).
[2:00-m -12]

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